GOLDEN BAY REALTY PTE. LTD.

v.

ORCHARD TWELVE INVESTMENTS PTE. LTD.

COURT OF APPEAL, SINGAPORE
TS SINNATHURAY J
FA CHUA J
CHAO HICK TIN JC
[CIVIL APPEAL NO. 38 OF 1986]
23 MARCH 1989

CONTRACT: *Interpretation of clauses in agreement - Intention of the parties - Whether the clause is ambiguous - Agreement in statutory form - Prescribed by Sale of Commercial Properties Rules 1979 - Whether clause to pay liquidated damages or penalty - Whether principles governing liquidated damages or penalty applicable - Delays caused by government authorities - Whether beyond control of vendor - Force majeure clause.*

The appellant agreed to sell to the respondent certain premises in a building development. The agreement is in a form prescribed under the rules made pursuant to powers conferred on the Minister by an Act of Parliament. Under the agreement, the appellant were required to give to the respondents the notice to complete the sale and actual completion to take place fourteen days thereafter. The appellant did not give the requisite notices to complete. The issues were whether the liquidated damages clause in agreement was valid and whether appellant can rely on force majeure clause for delay in completion.

Held:

[1] The clause states if "the vendor shall fail to give the said notice." The word fail here, means if the vendor does not give the said notice, and does not refer to a failure on the part of the appellant for want of diligence or of misconduct.

[2] The appellant have prescribed a deadline for completion and, if they fail to give the notice by the date, the clause comes into play.

[3] Where the language of the clause is imperfect, interpreting it within the meaning manifest on the fact of it does not amount to re-writing the clause. The clause provides for the imposition of liquidated damages on the number of days elapsed between the prescribed date for giving the notice to complete and the actual date on which the notice was given.

[4] The principles governing liquidated damages have no application to a case where the parties are compelled by law to enter into the contract in the form prescribed.

Here, the agreement being an agreement in the statutory form prescribed by an Act of Parliament and having a clause for the imposition of liquidated damages, the general principles governing liquidated damages or principles governing liquidated damages or penalty do not apply. As such, unless it is shown that the rules are ultra vires the Act, they should be given effect to as the Act itself.

[5] The force majeure clause does not come into play where the delays caused were within the contemplation of the appellant and were within their control.

[6] The delays amounted to non-approval of plans etc. caused by government authorities which were delays normally contemplated by developers and, the fact that the appellant had in fact under provided the time required to do the necessary things does not make these delays "any other cause or causes over which the vendor has no control".

[Appeal dismissed with costs.]

Cases referred to:
Dunlop Pneumatic Tyre Co. Ltd. v. New Garage & Motor Co. [1915] AC 79
Phoenix Heights Estate (Pte) Ltd v. Lee Kay Guan & Anor. [1982] 2 MLJ 86
Loh Wai Lian v. Housing Corporation Sdn. Bhd. [1987] 2 MLJ 1
Loates v. Maple [1903] 88 LT 288

Legislation referred to:
Planning Act [Sing], s. 9(3)
Sale of Commercial Properties Rules 1979 [Sing], rr. 6, 7
Sale of Commercial Properties Act 1979 [Sing], ss. 5(1), (2), 7A(2)

For the appellant - Leolin Price QC (asst by Michael Kuah)
For the respondents - Cheong Yuen Hee (asst by Chua Keng Loy)

JUDGMENT

Chao Hick Tin JC:

This action concerns an agreement dated 17 February 1981 entered into by the appellant to sell to the respondent certain premises in a building development. The agreement is in a form prescribed under Rules made pursuant to powers conferred on the Minister by an Act of Parliament. Under the agreement there is a provision for payment of liquidated damages for late completion. There is also a force majeure clause. This appeal raises two main issues and they are the same issues that were raised before the High Court: first, is the liquidated damages clause in the agreement valid and enforceable; and second, whether in the circumstances the appellant can rely on the force majeure clause and thus be excused from having to pay liquidated damages for the delay in completing the transaction.

The full facts of the case are set out in the judgment of Thean J We do not propose to restate them. Suffice it that we sketch out the essentials. In or about 1970 the appellant embarked on the development of a modern multi-storey shopping, office and residential twin-tower building called "Orchard Towers". On 8 September 1975, the architects certified the practical completion of the building works. On the same day a temporary occupation licence was issued by the relevant authorities for the front block up to the 12th floor thereof, which covered the office premises in question in this action i.e., Unit No. 1205 ("the said Unit"). Under the agreement of 17 February 1981, (the agreement) the purchase price of the said Unit is the sum of $3,380,000. The respondent, having paid all instalments due (75%) in accordance with Clause 4 of the agreement, took possession of the said Unit on 19 May 1981. In the meantime, even before this purchase by the respondent, the said Unit was already rented out by the appellant for a period of three years from 1 November 1978. As from 19 May 1981, the respondent received the rents for the said Unit.

Under the agreement, the appellant were required to give to the respondent the notice to complete the sale by 31 December 1981 and actual completion should take place within 14 days thereafter. The appellant did not give the requisite notice to complete until 17 June 1983.

As the entire action centres round two clauses of the agreement, we will now set them out in full:

> 14(1) The sale and purchase of the said unit shall be completed at the office of the vendor's solicitors, Messrs Lee & Lee fourteen (14) days after the receipt by the purchaser or his solicitors of the notice to complete from the vendor or the vendor's solicitors such notice to be accompanied by the certificate of the vendor's architect that the temporary occupation licence or certificate of fitness for occupation has been obtained for the said unit, and subject to Clause 2 hereof, after receipt by the purchaser or his solicitors of the notice from the

vendor's solicitors that the subsidiary strata certificate of title has been issued for the said unit. On completion, the vendor shall execute in favour of the purchaser a transfer or lease, as the case may be, of the said unit sold, such transfer or lease to be prepared by and at the expense of the purchaser.

(2) The said notice to complete shall be given by the vendor on or before 31 December 1981. If the vendor shall fail to give the said notice to complete on the date fixed for completion the vendor shall pay to the purchaser liquidated damages calculated from day to day commencing from the date when such notice to complete should have been given at the rate of nine (9) per cent per annum on a sum equal to eighty-five (85) per cent of the purchase price, such interest may be deducted from any instalment due and payable to the vendor.

15 Notwithstanding anything herein contained if by reason of any strike, civil commotion, earthquake, flood or natural disaster or any other cause or causes over which the vendor has no control there shall be any delay on the part of the vendor in completing the building or completing the sale of the said unit to the purchaser, the vendor shall not in any way be liable to the purchaser in damages or otherwise.

First question: Is Clause 14 a valid liquidated damages provision?

We will first take the arguments of the appellant on Clause 14(2) and they may be grouped under the following three heads:

(i) On the facts the appellant had not failed to give the notice to complete.

(ii) The expression "the date fixed for completion" is illogical and renders the whole provision uncertain and ambiguous and thus of no effect.

(iii) The clause is effectively a penalty provision and should not be enforced.

Taking the first point: Mr. Price contended that the word "fail" in Clause 14(2) points to something in the nature of a failure by reason of either of misconduct on the part of the appellant or want of due diligence. He relied on the case *Loates v. Maple* [1903] 88 LT 288. He said that as there was neither misconduct nor want of due diligence on the part of the appellant, the clause does not really come into play.

Obviously the word "fail" may mean different things in different contexts. Considering the context here, it is our view and we agree with the learned Judge that the expression "if the vendor shall *fail* to give the said notice" really means "if the vendor does not give the said notice." It must be borne in mind that the date fixed for giving the notice to complete was to all intents and purposes prescribed by the appellant. If the appellant had thought that the deadline of 31 December 1981 was not adequate to enable them to complete the sale, they could have prescribed a later date. But they did not do so.

This argument of the appellant becomes even more untenable if one considers Clause 15 which relieves the appellant from having to pay liquidated damages for any delay on their part in completing the sale due to "cause or causes over which the vendor has no control." If this argument of the appellant is valid, it would render that part of Clause 15 totally redundant. In our view, this argument must fail.

Turning to the second point, the arguments here revolve round the words "for completion". For convenience, we would set out the first few lines of Clause 14(2) again:

> The said notice to complete shall be given by the vendor on or before 31 December 1981. If the vendor shall fail to give the said notice to complete on the date fixed for completion ...

Mr. Price contended that in the context the reference to "the date fixed for completion" is ungrammatical and illogical and renders the provision nonsensical, ambiguous and uncertain. Accordingly, it ought not be given effect to.

While we agree that the provision could have been better drafted as the date 31 December 1981 was not the date for actual completion but for giving notice to complete, nevertheless in our view its meaning is clear. We agree with the learned Judge that the expression must mean the date fixed for service of notice to complete. It must be borne in mind that the very object of giving the notice is to complete the sale. Under the clause, liquidated damages are imposed for the period from 31 December 1981 until the date when the notice to complete is served, even though actual completion may not take place until 14 days later, at the very latest. We do not see anything illogical, nonsensical or uncertain in this method of computing the liquidated damages payable based as it does on the number of days that have elapsed between the prescribed date for giving notice and the actual date on which notice was given. This clearly emerges from the clause. We do not agree that the construction given by the learned Judge amounts to re-writing the clause. On the contrary, we think it is merely giving the clause the meaning which is manifest on the face of it, even though the language used may not be perfect.

We turn next to the third point which is also the most substantial point in this appeal. The submission of the appellant is that Clause 14(2) is truly a penalty clause and not a liquidated damage clause even though it is stated to be the latter. The agreement is in a standard form as prescribed in the Sale of Commercial Properties Rules 1979 (as amended in 1980) (the Rules). The Rules were made by the Minister pursuant to the powers conferred on him by the Sale of Commercial Properties Act, 1979 (the Act). Under the agreement, the purchase price of the said Unit is to be paid by instalments (see Clause 4) as the building works progressed. As on 17 February 1981, when the agreement was entered into between the appellant and the respondent, the building had already been completed and the temporary occupation licence (TOL) issued, all the instalments due up to the stage of the issue of the TOL (totalling 75%) had to be paid, leaving only 25% to be paid on completion as prescribed in Clause 4. Another 5% was paid by the respondent to the appellant on 12 January 1983 when the Certificate of Fitness (COF) of the relevant authorities was issued.

Counsel for the appellant emphasised that the following facts must clearly be borne in mind in determining whether the clause is a penalty provision or a liquidated damages provision:

(i) When the said Unit was purchased by the respondent, the premises were already tenanted and occupied;

(ii) The respondent received rents from the tenant as from 19 May 1981 when they paid up 75% of the purchase price which was then due;

(iii) The respondent enjoyed the benefits of the premises and had yet to pay the remaining 25% of the purchase price. Five percent more was only paid on 12 January 1983.

Counsel for the appellant submitted that the respondent have not suffered, nor have they shown that they have suffered any loss or disadvantage by the mere fact that the notice to complete the sale was not served until June 1983. He said it was possible for the respondent to mortgage the said Unit or deal with it in any other way, including a sub-sale. He contended that Clause 14(2) which provides for liquidated damages based on 9% per annum of 85% of the purchase price, calculated from day to day, could not have been a genuine pre-estimate of damages which the respondent could suffer. If the respondent have truly suffered any damages, the remedy of a claim for general damages for actual loss is always available to the respondent.

The law on the distinction between a penalty provision and a liquidated damages provision is laid down in the leading case *Dunlop Pneumatic Tyre Co. Ltd. v. New Garage & Motor Co Ltd* [1915] AC 79 where Lord Dunedin stated the principles thus at p. 86:

1. Though the parties to a contract who use the words 'penalty' or 'liquidated damages' may *prima facie* be supposed to mean what they say, yet the expression used is not conclusive. The Court must find out whether the payment stipulated is in truth a penalty or liquidated damages. ...

2. The essence of a penalty is a payment of money stipulated as in terrorem of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage. ...

3. The question whether a sum stipulated is penalty or liquidated damages is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, Judge of as at the time of the making of the contract, not as at the time of the breach. ...

4. To assist this task of construction various tests have been suggested, which if applicable to the case under consideration may prove helpful, or even conclusive. Such are:

(a) It will be held to be penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach ....

(b) It will be held to be a penalty if the breach consists only in not paying a sum of money, and the sum stipulated is a sum greater than the sum which ought to have been paid ...

(c) There is a presumption (but no more) that it is penalty when 'a single lump sum is made payable by way of compensation, on the occurrences of one or more or all of several events, some of which may occasion serious and others but trifling damage' ...

On the other hand:

(d) It is no obstacle to sum stipulated being a genuine pre-estimate of damage, that the consequences of the breach are such as to make precise pre-estimation almost an impossibility. On the contrary, that is just the situation when it is probable that pre-estimated damage was the true bargain between the parties ...

The only local case which comes close to the instant case is *Phoenix Heights Estate (Pte) Ltd. v. Lee Kay Guan & Anor*. [1982] 2 MLJ 86 which went all the way to the Privy Council. There was also a similar liquidated damages clause that if the vendor should fail to give the notice to complete on the agreed date, liquidated damages payable would be based on 9% per annum of the purchase price. There was delay in the construction of the house. Possession was offered to the purchasers as soon as TOL was issued but the purchasers refused to accept it until some four and a half months later. Only another six months later did the vendor serve the notice to complete. The Court of Appeal in answer to the argument that the liquidated damages clause was in truth a penalty clause said at [1979] 1 MLJ 157:

> In our opinion the agreement between the parties is similar to a building contract. The contract contains a definite date from which liquidated damages for delay in giving a notice to complete are to run. The provision in question, having regard to all the terms of the contract, is clearly a genuine pre-estimate of the loss which is likely to flow from a breach of the contract and accordingly is recoverable without proof of the actual loss suffered. The fact that it is difficult to ascertain the loss caused to the purchaser by delay in giving a notice to complete indicates that the provision to pay a sum as specified in Clause 11 is in the nature of liquidated damages so long as the sum specified as payable is not excessive.

The Court of Appeal also rejected the argument that no liquidated damages should be awarded to the purchasers in respect of the period after possession of the house was offered to the purchasers. In the Privy Council, their Lordships dealt with this argument as follows at p. 88:

> ... There was no obligation on the purchasers to accept possession before completion. The vendor could not curtail the right of the purchasers to liquidated damages by making an offer of possession which the purchasers were not bound to accept ...

and later in the same page they said:

> The offer in the present case of vacant possession before completion was never a part of the sale agreement, but was an event altogether outside the contract. It cannot therefore be taken into account in assessing the validity of the agreement for compensation for delay in serving a notice to complete.

It is true that in the present case, the circumstances may not be considered to be similar to that of a building contract, as the said Unit had already been constructed and completed at the time the contract was entered into. However, the principles enunciated in *Dunlop Pneumatic Tyre* must still be applied to determine whether the clause should be given effect to. Is it a sum stipulated in terrorem? The rate of 9% per annum over 85% of the purchase price cannot be considered to be an extravagant or unconscionable amount. When a person purchases a property he purchases not just the physical possession of the property but also the legal title to it. When a vendor does not complete and transfer title of the property to a purchaser on the agreed date, the loss which the purchaser may suffer may be difficult to quantify even though possession of the property has been conveyed to the purchaser. The extent of the loss which may be suffered by the purchaser may vary. As was pointed out by Thean J, until title is vested in the purchaser, purchaser's interest is merely an equitable one and, like all equitable interests, is subject to a risk of being overreached by other interests. If, as a result of the delay, the caveat lodged against the property expires and there is a lapse by the purchaser in applying to renew the caveat and if in the meantime, the property has been dealt with and a new purchaser lodges a caveat, the loss to the first purchaser could be very substantial indeed. And this loss would far exceed the amount of liquidated damages payable at 9% per annum of 85% of the purchase price. There can be another disadvantage: the delay in completion could inhibit prospective purchasers from buying the property. They might be concerned about complications relating to the obtaining of title. If the respondent had wanted to sell the property, they might have to suppress the price. The fact that there were many sub-sales of other units in this development does not necessarily mean there was no risk or that the delay did not affect the price. There could be a loss and the exact amount would be hard to quantify. It is also important that we bear in mind we are here dealing with only one breach, i.e., failure to give notice to complete: see Privy Council decision in *Phoenix Heights* at [1982] 2 MLJ at 88. The amount of liquidated damages payable for each day of delay could easily be computed. The longer the delay the more will be the amount payable. The fact that it is difficult to quantify the loss which a purchaser may, in the position of the respondent, suffer as a result of the delay is, to use the words of Lord Dunedin in *Dunlop Pneumatic Tyres*, "just the situation when it is probable that pre-estimated damage was the true bargain between the parties."

We turn next to the argument that as the respondent had obtained possession and have been enjoying the benefits of the said Unit since 19 May 1981, no liquidated damages should therefore be due to the respondent. In this connection there is admittedly one factual difference between the present case and *Phoenix Heights Estate*: here under Clause 13, the appellant are required to deliver vacant possession of the said Unit within 14 days after the issue of the TOL in respect of that Unit. But it is entirely up to the respondent whether they wish to take possession immediately or at any time until the date appointed for the completion of the sale. In *Phoenix Heights Estate* the absence of such an obligation in the contract was a consideration which led the Privy Council to hold that the fact that the vendor had in that

case offered possession to the purchaser could not be taken into account in assessing the validity of the liquidated damages clause. Now in the instant case even taking into account Clause 13, and the fact that possession of the said Unit was given to the respondent on 19 May 1981, we do not think these materially alter or add anything more to what we have discussed in the last paragraph.

Moreover, even if we were wrong in the views held in the immediately preceding two paragraphs, there is a major obstacle which confronts the appellant. We have already said the agreement takes a statutory form. Section 5(1) of the Act provides that every agreement for the sale and purchase of a commercial property shall "contain such terms and conditions of sale as may be prescribed by the rules made under (the) Act." Under s. 9 of the Act, the Minister is empowered to make rules "for or in respect of every purpose which is considered by him necessary for carrying out the provisions of (the) Act." In particular, such rules may regulate the form or forms of an agreement for the sale and purchase of any commercial property. Pursuant to that power the Minister has enacted the Sale of Commercial Properties Rules 1979 (as amended in 1980) ("the Rules"). Under r. 6 of the Rules, the agreement for the sale of any commercial property has to be in the form set out in the Schedule to the Rules. Rules 7 provides that no alteration or amendment may be made to the form of the agreement except with the approval in writing of the Controller of Housing. Any person who contravenes r. 7 is guilty of an offence and is liable to be punished. Further, s. 5(2) of the Act provides that any term or condition of sale in an agreement which is inconsistent with the terms and conditions of sale prescribed by rules made under the Act shall to the extent of the inconsistency be null and void.

Mr. Price did not seriously contend that the form of agreement prescribed by the Minister is not valid or ultra vires the Act. Indeed, he did not make any substantive submission along that line. However, he made the point that a clear distinction must be drawn between a form of agreement which is part of the Act and a form which is made by the Minister under powers conferred by the Act. He argued that the Minister could not have intended by the Rules to alter common law principles governing liquidated damages. He said that every such contract entered into must be interpreted in the light of the circumstances prevailing in each case. The same clause may be interpreted differently in different circumstances.

We would point out that by s. 10 of the Act, every commercial property in respect of which no certificate of fitness or no subsidiary strata certificate of title (if applicable) has yet been issued is governed by the Act. In other words, Parliament intended that every sale of a commercial property, from the stage where no construction work has yet begun up to the stage where the building has been completed and TOL issued, but before the issue of the certificate of fitness, has to be in the form prescribed. The parties have no discretion to amend the form of agreement or agree otherwise except with the approval of the Controller of Housing. The aim of the Act and the Rules is to make sure that legal completion of the transaction takes effect on the date specified, failing which liquidated damages will be payable calculated up to the date when the notice to complete was actually given.

From the authorities, it is quite clear that the principles governing liquidated damages or penalty apply only in a case where the parties on their own free will choose to fix a certain sum as the amount payable in the event of a breach. As Lord Parker said in *Dunlop Pneumatic Tyre* at p. 97:

> where the damages which may arise out of a breach of contract are in their nature uncertain, the law permits *the parties to agree beforehand the amount* to be paid on such breach.

The appellant and the respondent in the instant case never did bargain about Clause 14(2) at all. They had no choice. We are of the view that those principles governing liquidated damages have no application to a case where the parties are compelled by law to enter into the contract in the form prescribed. Unless it can be shown that the Rules are ultra vires the Act, they should be given effect to as the Act itself.

In the Malaysian case *Loh Wai Lian v. Housing Corporation Sdn. Bhd.* [1987] 2 MLJ 1, which was also concerned with the sale of a property where the parties were required under the rules to enter into a contract with certain prescribed terms, though the specific point in the action was different, the Privy Council made the following observations at p. 4:

> It is, in their Lordships' view, tolerably clear that the only rational purpose of defining a payment to be made by the vendor, by reference to what has become a conventional term, as agreed liquidated damages was to make it clear that the purchaser was not to have any right to any other payment by way of damages in respect of the delay over and above what the vendor was undertaking to pay, *for there could not sensibly be any prospect of a sum calculated according to mandatory statutory provisions being held to be irrecoverable as a penalty*.

Accordingly, we hold that Clause 14(2) cannot be struck out on the ground that it is a penalty provision and that the appellant are liable to pay liquidated damages under Clause 14(2) in respect of the delay in giving notice to complete the sale on the specified date.

Applicability of Clause 15

We turn next to consider the question whether the appellant are entitled to rely on Clause 15 and plead that they were not able to give the notice to complete the sale because of a "cause or causes over which the vendor has no control." While we would agree with the appellant that the expression "or any other cause or causes over which the vendor has no control" should not be restricted *ejusdem generis* with the events enumerated before, it must nevertheless be truly a cause beyond the control of the appellant. We also agree that what happened before 17 February 1981 should not be taken into account in determining whether the appellant could rely on Clause 15. This is because until the agreement was entered into, the obligation to give notice to complete on 31 December 1981 did not arise.

However, it seems to us that the state of affairs of the development at the date of the agreement is relevant. On that day, subdivision approval under s. 9(3) of the Planning Act had yet to be obtained. A great deal of work had still to be carried out by the appellant and their consultants including the relevant government authorities. They knew of all these. This is clear from the following statement made by Lee Kwee Mildred, the property manager of the appellant, in her affidavit filed on 5 March 1984:

> The process of obtaining strata titles for any development in Singapore involves a variety of application required to be made to different departments of the government and by different consultants of the developer such as the architect, surveyor and solicitors. The procurement of strata titles for the said development was especially complex because of the requirements for, *inter alia*, the conversion of the ROD Lots to Lots registered under the LTA, the alienation by the government in favour of the respondent of part of the former backlane situated amidst the land under development, the amalgamation of the converted ROD lots and the LTA lots into two separate lots (divided by claymore Drive) each with its own certificate of title and thereafter the application for the issue of the subsidiary strata certificate of Title for all the units in the said development.

In view of all these complications to obtain the subsidiary strata certificate of title (SSCT), it was incumbent on the appellant to specify a period which would be adequate to get all the procedures done and ultimately the SSCT. When the appellant specified in the agreement that notice to complete would be given by 31 December 1981, they directly warranted that the SSCT could be obtained by that date. They must be deemed to have included in their calculation the time required by their consultants to prepare the plans and the time normally required by the government authorities to process and give their approvals.

No evidence was produced to show that the government authorities took more time than normally taken to give their approvals. Indeed no argument was made in this regard. What we do see are instances where the appellant, not being able to meet deadlines set by the authorities, had requested for various extensions and varying periods of extension were granted, the last up to 16 June 1983. These applications for extension were made because, pursuant to the new powers granted under the Sale of Commercial Properties (Amendment) Act 1980, the Controller of Housing had, in a direction to all developers, including the appellant, which was dated 16 January 1981, given the developers one month within which to make the s. 9(3) application. They were also given one year within which to obtain certificates of title and SSCT. Failure to comply with the direction constituted an offence punishable under s. 7A(2) of the Act.

On an examination of the facts, it is quite clear to us that for the entire period from 17 February to 31 December 1981, all that the appellant managed to do was to submit the application for sub-division under s. 9(3). No real concerted efforts were made to meet the deadline 31 December 1981. As was pointed out by the learned Judge, matters began to move only in March 1982. In our view, it is clear that there were three main causes for the delay. First, the consultants were slow in discharging their tasks. Second, the appellant did not take any active steps to meet the deadline and instead allowed matters to drift. Third, there was an element of under-provision when the appellant specified 31 December 1981 as the date would give notice to complete.

We do not think a vendor is entitled to claim protection under the force majeure clause if he has under provided the time required to do the necessary things. The situation would be the same as if a builder had covenanted to build a structure within three months and notwithstanding his best efforts still failed to meet the target because he had under provided the time required. We do not see how the builder could avoid liability on the ground that the delay was due to a cause beyond his control.

Turning to the next point: if the delay was caused by the appellants' consultants, can that be considered to be a "cause or causes over which the appellant have no control"? Are the appellant responsible for the acts or omissions of their consultants? In this regard the distinction between tortious and contractual liabilities must be appreciated. While a person may not be liable in tort for the wrong of an independent contractor, the same is not so in regard to contractual liabilities. Unless the contract provides otherwise, a person cannot assign his contractual liabilities to another. *Prima facie* he is bound to fulfil his obligations notwithstanding any purported assignment.

We do not think the expression "any other cause or causes over which the vendor has no control" is wide enough to excuse the appellant for the delays of their consultants. Otherwise, it would mean that nobody is responsible for the delays caused by the consultants, as the purchaser cannot proceed against the consultants, there being no privity between the purchaser and the consultants. Indeed, if the arguments of the appellant are correct, it would also mean that if the delay is due to the default of the contractor of the development project,

the vendor would also be excused under Clause 15 and the purchaser would be left without any recourse. To adopt such a broad and liberal interpretation to that expression would render quite ineffective or worthless the deadline laid down in Clause 14(2). The vendor must make his own arrangements with his consultants to ensure that he is able to fulfil his commitments under the Contract. We would, however, agree that the vendor cannot be responsible if the delay is due to the relevant authorities i.e., they have taken longer time than normally required to process the applications.

Even if we were wrong to think that Clause 15 does not excuse the appellant for delays caused by their consultants, we are of the opinion that implicit in Clause 15 is an obligation on the part of the appellant to do all they can to see that the deadline is met. No evidence was placed before the Court that the appellant did anything to ensure that the deadline was met. No timetable or programme was drawn up showing the things that needed to be done or steps taken to meet the completion schedule. Everything was done in a rather haphazard manner without any organisation aimed at the specific target date. The appellant did not show any real concern for the deadline of 31 December 1981. At no time during the period 17 February 1981 to 31 December 1981 did the appellant specifically inform the consultants that there was the deadline of 31 December 1981. Actions or steps that could be taken concurrently were not even explored, far less pursued. In our view the appellant had not done everything within their power to meet the deadline.

We are satisfied that the appellant have not made out a case that the delay in obtaining the SSCT was due to a cause or causes beyond their control. The burden is on them. They have freely specified 31 December 1981 as the date on which the notice to complete would be given. They should not be permitted to renege on their commitment.

Finally we would refer to the alternative argument of the appellant that as the relevant authorities had granted extensions up to the date on which notice was given to complete, that indicates that the delays were fully justified. We are unable to accept that submission. First, the criteria used by the relevant authorities in determining whether to grant extensions might not be the same as those required under Clause 15. In any event, it is for the Courts to decide on the facts whether the delays were justified. Second, the direction given by the Controller of Housing on 16 January 1981 was a standard form letter issued to all developers giving them one year within which to obtain the SSCT. The Controller of Housing would not have known the unusual circumstances of this case, involving three different types of land, ROD lots, LTA lots and state land. Admittedly, on each occasion when an application was made to the relevant authorities to extend time, reasons were given. While those reasons might be considered adequate for the authorities to grant extension, in our view they could hardly be described as matters outside the control of the appellant. The appellant knew the position precisely and should have provided adequate time for those things to be carried out and should also have taken a more active role in ensuring that the deadline was met. The appellant failed so to do.

In our judgment the learned Judge is clearly right in the orders he made. Accordingly, we would dismiss this appeal with costs.

Also found at [1990] 1 CLJ 353